IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 17074 of 2004(G)

OS.32/1999 of M.C.,PARAPPANANGADI
.....

PETITIONER:

AMBALI GOVINDAN KUTTY NAIR,
S/O. AMBALI LAKSHMI AMMA, AGED 63, RESIDING AT CHERUKAVU AMSOM, CHEVAYUR DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.

ADDL.P2 TO P4 ARE IMPLEADED

2. RATHNAVALLY AMMA, AGED 60,
W/O.LATE AMBALI GOVINDANKUTTY NAIR,
RESIDING AT CHERUKAVU AMSOM
CHEVAYUR DESOM, ERANAD TALUK,
MALAPPURAM DISTRICT.

3. NARAYANANKUTTY,, AGED 39,
S/O.LATE AMBALI GOVINDANKUTTY NAIR,
RESIDING AT CHERUKAVU AMSOM,
CHEVAYUR DESOM, ERANAD TALUK,
MALAPPURAM DISTRICT.

4. JAYALAKSHMI A., AGED 36, D/O.LATE AMBALI,
GOVINDANKUTTY NAIR, RESIDING AT
CHERUKAVU AMSOM, CHEVAYUR DESOM,
ERANAD TALUK MALAPPURAM DISTRICT.

ADDL.P2 TO P4 ARE IMPLEADED AS PER ORDER DT.1.08.2007 IN I.A. NO.10077/2007

BY ADV. SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.HARISH R. MENON

W.P.(C) NO.17074/2004

RESPONDENTS:

AMBALI UNNIKRISHNAN,
S/O. AMBALI KARTHIANI AMMA, AGED 47,
RESIDING AT CHERUKAVU AMSOM, CHEVAYUR DESOM,
ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.17074/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE AFFIDAVIT FILED BY THE PETITIONER IN SUPPORT OF THE INTERLOCUTORY APPLICATION, IA. NO.1271/03 IN OS. NO.32/99 ON THE FILE OF THE MUNSIFF'S COURT, PARAPPANANGADI.

EXT.P2:- COPY OF THE ORDER DT. 12.8.03 PASSED BY THE LEARNED MUNSIFF'S OF PARAPPANANGADI IN IA. NO.1271/03 IN O.S. NO.32/99.

/TRUE COPY/

P.A.TO JUDGE

tss

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 17074 of 2004

Dated this the 1st day of August , 2007

JUDGMENT

Ext.P2 order by which the learned Munsiff dismissed an application submitted by the plaintiff for calling for the thumb impression register maintained in the Sub Registrar Office, Kondotti, is under challenge in this writ petition. The principal bone of contention between the parties is the execution of a settlement deed. According to the petitioner, the settlement deed was duly executed by his father Sri.Govindan Nair, but his brother the respondent denies the execution of that document. According to the petitioner, the original of the settlement deed is with the respondent himself and he became constrained to file the suit on the basis of a certified copy. In order to substantiate his contention that his father had duly executed and facilitated registration of the settlement deed, he filed an application for summoning the original of the settlement deed together with the

filing sheets and that application was allowed. On perusal it was seen that neither the original document nor the filing sheet contained the thumb impression of the executant. It was under such circumstance that I.A. 1271/2003 was filed by the petitioner for the production of the thumb impression register book. The learned Munsiff in Ext.P2 has taken the view that the question whether the author of the alleged Will (settlement deed) himself presented the same before the registrar for affecting registration of the Will or not is not a material thing to prove the execution of Will. On that reason and also on the reason that even the petitioner does not appear to be very sure as to whether Sri.Govindan Nair has put his thumb impression in a register and on the further reason that the application has been filed at a belated stage, the learned Munsiff dismissed I.A.No.1271/2003 by passing Ext.P2.

2. Heard both sides. Sri.Harish R.Menon the learned counsel for the petitioner would submit that in the nature of the contest which has been raised the question whether the petitioner's father himself had presented the document for registration before the sub registry will be relevant. Sri.K.Jayesh

Mohankumar would submit that subsequent to the passage of Ext.P2 order, the petitioner himself filed another application I.A.NO.1521/2003 for forwarding certain documents admittedly executed by Govindan Nair together with the original of the settlement deed produced on summons to a Forensic expert. In view of that I.A.No.1271/2003 according to Sri.Jayesh has become unnecessary. The original document produced on summons contains the thumb impression of Govindan Nair according to Sri.Jayesh. But Sri.Harish submits that the original document also does not contain the thumb impression of Sri.Govindan Nair and that is why it became necessary for the petitioner to call for the filing sheet and to file the present I.A. for calling for the thumb impression register.

3. I am unable to agree with the learned Munsiff who, say that the question whether Sri. Govindan Nair had subscribed his thumb impression to the thumb impression register or to any other register kept in the sub registry will not be of any relevance. If as a matter of fact, the original settlement deed produced on summons contains thumb impression of Govindan Nair, it may not be necessary to call for the thumb impression

register since the document itself would be a good evidence to show that Govindan Nair has actually appeared before the Sub Registrar for facilitating the registration of the document or for admitting execution.

Under the above circumstances, I set aside the impugned order and direct the learned Munsiff to verify whether the original settlement deed contains purported thumb impression of Govindan Naiar. If it so contains, he can pass fresh orders reiterating his present decision. But if it is seen that the original document does not contain the thumb impression of Govindan Nair, he will pass fresh orders allowing the application.

The writ petition is disposed of as above.

PIUS C. KURIAKOSE,
JUDGE.

Dpk